223

Mr Justice Wayne

Mack.

SUPREME COURT OF THE UNITED STATES.

No. ~~232~~. 164.

THE UNITED STATES, APP'TS,

vs.

JOSE DE JESUS VALLEJO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

225

SUPREME COURT OF THE UNITED STATES.

No. 232.

THE UNITED STATES, APP'TS,

vs.

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"Bolsa de San Cayetano."

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Transcript of the proceedings in case No. 85.

JOSÉ DE JESUS VALLEJO, claimant, *vs.* THE UNITED STATES, defendant. } For the place named "Bolsa de San Cayetano."

1 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this second day of March, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of José de Jesus Vallejo, for the place named "Bolsa de San Cayetano," was presented, and ordered to be filed and docketed with No. 85, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *March 17th*, 1853.

In case No. 85, José de Jesus Vallejo, for the place named "Bolsa de San Cayetano," the deposition of William A. Richardson, a witness in behalf of the claimant, taken before Commissioner Harry I. Thornton, with documents marked H. I. T., Nos. 1, 2, and 3, annexed thereto, was filed.

(*Vide* page 5 of this transcript.)

SAN FRANCISCO, *Aug. 9th*, 1853.

On motion of the United States law agent, case No. 85 was ordered to be placed on the trial docket.

Case No. 85 called; the counsel for the claimant read the evidence, and opened the argument, answered by the United States law agent, and closed by claimant; submitted, and taken under advisement.

2 SAN FRANCISCO, *Dec. 6th*, 1853.

In the same case, Commissioner Robert A. Thompson delivered the opinion of the board confirming the claim.

(*Vide* page 18 of this transcript.)

3 *Petition.*

To the honorable the commissioners for settling private land claims in California:

The petition of José de Jesus Vallejo respectfully showeth that on the 28th day of October, 1824, Don Ignacio Vallejo made and presented his petition to the most excellent deputation of California, praying for the confirmation of a certain grant made to him, the said Ignacio Vallejo, by Governor Pablo Vincente, in the name of the King of Spain, of a tract of land called the Bolsa de San Caytano, and situate in the present county of Monterey. That on the 25th day of October, 1824, said departmental assembly, at Monterey, by a decree under the signature of Don Arguello and of José Joaquin de la Torre, acknowledged, confirmed, and ratified said grant of Pablo Vincente to Ignacio Vallejo, and declared him to be the lawful owner of said land.

That afterwards, in the year 1834, and after the death of said Ignacio Vallejo, your petitioner, testamentary executor of the late Ignacio Vallejo, deeming it advisable, for the interest of the heirs, to obtain a grant more in accordance with all the formalities of the Mexican law than the decree above referred to, presented all the papers and documents relative to said matter to José Figueroa, acting governor of California, and obtained of him a full and perfect grant of all said tract of land known as Bolsa de San Caytano, on the 13th day of October, 1834.

That said petition of Ignacio Vallejo to the departmental assembly, the decree of the same, and a copy of Governor Figueroa's grant, are now on file in the archives of California, at present in the possession of the surveyor general of the United States of America for the State of California, and that duly certified copies of the same, together with the respective translation, are herewith submitted and prayed to be made a part of this petition.

That the last-mentioned grant of Figueroa is now in the hands of your petitioner, and ready to be offered in evidence whenever
4 required. That said land is situated in the present county of Monterey, is known under the name of Bolsa de San Caytano, and that the boundaries of the same, according to the terms of said grant, are as follows: The beach, the highway leading from the presidio of Monterey to the town of Branciforte, on the Rio del Pajaro, or Birds' river, and the estuary of the south, containing altogether two square leagues, more or less. And your petitioner further saith that said Don Ignacio Vallejo took possession immediately after obtaining said first grant of Pablo Vicente in the name of the King of Spain, and that he, during his lifetime, and his heirs afterwards, among whom your petition, have up to this time held full and undisputed possession of said land, and have exercised, acknowledged, and exclusive ownership over the same.

He therefore claims to be the lawful owner of said land, and prays that your honorable body will confirm his claim and title thereto.

CLARK, TAYLOR & BECK,
Attorneys for Pl'ffs.

Filed in office March 2d, 1852.

GEO. FISHER, *Sec'y.*

5 *Deposition of Wm. A. Richardson.*

SAN FRANCISCO, *March* 17, 1853.

On this day, before Com'r H. I. Thornton, came Wm. A. Richardson, a witness in behalf of the claimant, José de Jesus Vallejo, petition No. 85, and was duly sworn, his evidence being given in English.

Questions by claimant.

Question 1st. What is your name, age, and place of residence?

Ans. My name is William A. Richardson; my age, fifty-eight years; and reside on my rancho at Saucilito, Marin county.

Quest. Look upon the original documents in Spanish, marked Exhibits 1, 2, and 3, now attached to your deposition, and filed in this case. State what you know in regard to their genuineness.

Ans. I am well acquainted with the handwriting of Pablo Vicente Sota, of José Figueroa, of Agustin V. Zamoran, and of Luis Antonio Arguello, having often seen them write. Their signatures, wherever they appear on said documents, are genuine.

Quest. 3d. State what you know in regard to the occupation of said ranch.

Ans. I have known the ranch for many years; it is situated in the county of Monterey, on the road from the city of Monterey to Santa Cruz. When I first knew it, it was in the possession of the late Ignacio Vallejo; after his death it passed to his family, and has remained in their possession ever since; the present petitioner being his administrator and the general agent of the family.

WILL'M A. RICHARDSON.

U. S. LAW AGENT.

Sworn to and acknowledged before me this 17th of March, 1853.

HARRY I. THORNTON, *Com'r.*

6 Filed in office March 17th, 1853.

GEO. FISHER, *Sec'y.*

7 MONT'Y,
12 *de Octubre de* 1822.

Se le concedio el suplicante el permiso que solicitaba de hacer casa.

SOLA.

Sor. Coronel y Gob'nor Don Pablo Vicente de Sola: Don Ignacio Vallejo, sarg't distinguido de la compania de caballeria del presidio de Monterey ante V. S. con el respecto que debe, pide V. E. y suplica le conceda licencia para fabricar casa en el paraje y Bolsa de S'n Caytano en donde y le tiene V. S. concedio desde el año de 1817 para criar ganado por su muy precia este para el resguado y abrego que los que cuidan el ganado, siendo preciso hacer la en este verano y al estando el tiempo adelanto causa de molestar la

atencion de V. S. para de todo resulta toda la mantenacion de su familia à lo que quedamos sumamto. agradecidos y V. S. pide y suplica le conceda lo que pide en que recibire gracia y menciar.

MONTEREY, 2 *de Junio*, 1821.

YGNO. VALLEJO.

Filed in office March 17th, 1853.

GEO. FISHER.

8 *Translation of doc. H. I. T.—No. annexed to the deposition of Wm. A. Richardson.*

Sor. Colonel and Gov'r Dn. Pablo Vicente de Sola:

MONTEREY, 12 *Oct'r* 1822.

Leave is granted to the petitioner, as prayed, to build a house.

(Sig'd) SOLA.

Don Ignacio Vallejo, distinguished sarg't of the cavalry company of the port of Monterey, before Y. E., with due respect, begs and prays Y. E. will grant him leave to build a house on the place, and Bolsa (purse) of San Cayetano, where Y. E. has already allowed him, from the year 1817, to herd cattle for this (house,) being entirely necessary for the protection and shelter of those who take care of the cattle, it being necessary to be built in this summer, and from the season being advancing, that is the cause of troubling Y. E.; for, from all this, the support of his family comes (resulta.) Whereby he shall be extremely grateful.

Therefore, he prays Y. E. will grant his prayer, whereby he shall receive favor, &c.

MONTEREY, *June* 2*d*, 1822.

(Signed) IGNO. VALLEJO.

Filed in office March 17th, 1854.

GEO. FISHER, *Sec'y.*

9 *Rancho de la Bolsa de S'n Caytano:*

Ex'm Deputacion: D. Ignacio Vallejo, sargento distinguido de la compania del presidio de Monterey hace à V. E. presente que habiendonos, dado el Sor. Gobernador D. Pablo Vicente de Sola à nombre del Rey à mi y al sargento Dolores Pico, ambos de d'ha compania el paraje llamado Bolsa de S'n Caytano que se contiene desde la playa hasta el camino real que va de este presidio pa la villa de Branciforte segun consta por nuestro peticion y el decreto de dicho señor gobernador el que adjunto con este memorial poco ó menos de V. E. para que se sirva apruebarlo y confirmarlo por nuestro lo q. suplicamos y pedimos en justicia ó loq desemos sumamente agradacidos, pues de esto resultera mismo biers estan y mantencian de nuestro crecidas familias.

MONTEREY, 18 *de Octubre de* 1824.

JOSÉ PICO.
YGNACIO VALLEJO.

Decreto.

MONTEREY, 25 *de Octubre de* 1824.

En atencion à que el antiguo señor gobernador ancedio à los interesados las tierras que hace desde el camino real hasta la playa que comprende la Bolsa de S'n Caytano deben poser los sors. que nadie les pueda perjudicar y atenerse al repitido decreto.

ARGUELLO.

JOSE JOAQUIN DE LA TORRE, *Secretario.*

Registro.—Fierro.—Rento.

Sor. Comand'te G'ral y Gefe Superior Politico:

El ciudadano José de Jesus Vallejo ante V. S. con el mas debiado respecto hace presente que teniendo seis cientos cubesas de ganador mayor y cienta ochenta de yeguas cortar y cortumos en el rancho de San Caytano, suplico a V. E. se sirvo concerderle la facultad para henar, lantear y señalar con los mancos q'e al margen se espresan y son las mismas con que ha hanado desde el año 1790 en que se decreto por el Sor. Gobernador Don Pedro Fages a mi señor padre y permiso de verificarlo y continuo desde aqullo fecha, usando de ellos hasta ahora y habiendo entraido dicho documento le obligan solicitar numero registro, cuya gracia espera de V. E. se sirva concederle si lo tuviere abiar.

MONTEREY, 25 *de Octubre de* 1827.

JOSÉ DE JESUS VALLEJO.

Senal eu cuchiha en cada oreja.

Este sitio comprende dos leguas mas ò menos de largo de ancho en parte una legua hasta una orilla real ò la boca ò paso del arroyo del sapero camino de la villa de Branciforte en cuyo sitio tiene siembras hasta la bolsa de d'ho sitio el cual forma una bolsa que concluye en la mar y dentro de la se hallan partas abundantes y aguas con dos lagunas permanente mateniendose en teala seguridad el ganado. Hay un corto encinal en el extenso y solo el bosque que forma el rio ò arroyo del Caytano que desemboca en la mar.

OFFICE OF THE SURVEYOR GENERAL OF THE U. S. FOR CALIFORNIA.

I, Samuel D. King, surveyor g'l of the United States for the State of Cal'a, and, as such, now having in my office and under my charge and control a portion of the archieves of the former Spanish and Mexican territory in department of Upper California, do hereby certify that the two preceding and hereunto annexed pages of tracing paper, numbered one and two, and each of which is verified by my initials, (S. D. K.,) are truly and accurately copied from two pages of writing in an unbound book, described as cuaderon del register de las sitios fierras y señales que poseen los habitantes del Territory de la Alta California, which is on file as part of the said archieves in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at the city of San Francisco, this twentieth day of February, A. D. 1852.

SAMUEL D. KING,
Surveyor General, Cal'a.

Filed in office March 2d, 1852.

GEO. FISHER, *Sec'y.*

11 Sello primero [SEAL] seis pesos.

Para los años de mil ochocientos treinta y dos, y ochocientos treinta y tres.

{ GOBIERNO POLITICO DE LA ALTA CALIFOR. } José Figueroa, general de brigada de la Republic Mejicana, comandante general y inspector y gefe, superior politico del Territorio de la Alta California.

Por cuanto Don José de Jesus Vallego alvecca de la testamentario del finando Don Ygnacio Vallejo, ha pretendido para su beneficio personal de las heredencias del dicha testamentaria, el tereno conocido con el nombre de Bolsa de San Caytano, colindante con el Rio de Pajara, camino principal de la villa de Branciforte. El estero del sur y la costa, practicadas primeramente las diligencias y averiguaciones concerviantes segun lo dispuesto por leyes y reglamentos; y atendio a la notorio antiguidad con que ha poseido el mencionado terreno usando de las facultades que me son conferidos à nombre de la nacion Mejicana he venido por decreto de once del corriente en concederle à la espresada testamentaria el terreno mencionado en revalidacion de la concesion hecha por el Señor Gobernador Don Pablo Vicente de Sola en veinte y tres de Febrero de un ochocienta veinte y tres, durandole la propiedad de el por las presentes letras entendiendan dicha concesion con eterno confirmidad à lo dispuesto por las leyes y bajo los condiciones siguientes.

1a. Que se sometara à las que establecer el agl'mento que se ha de formar para la distribucion de terrenos valdios y que entre tanto ni el agraciado, ni sus herederos podran dividir ni enajenar el que se le adjudicar, imponer suelo vinculo, fianza hipoteca ni otro Gueramen con que sea por causa piadosa, ni pasarlo à manos muertes.

12 2a. Pueda cercarlo sin perjudicar las traveria caminos y servidumbres, destinandole al uso ò cultivo que mas le acomede, pero dentro una año à le mas, fabricara casa y estara habitano.

3a. Solicitara el juez respectivo que le de lo posecion juridica en virtuo de este despacho por el cual se macaran los linderos en cuyos limites pondra a mas de las mojoneras algunos arboles frutales ò silvestres de alguna utilidad.

4. El terreno de que se hace donacion es dos sitios de ganado mayor poco mas ò menos segun esplico el deseño que corre en el expediente. El juez quedien la posecion lo hara medir conforme à ordenanza, quedando el sobrante que resulte à la nacion para los usos convenientes.

5. Si contravinien a estas condiciones perdera su derecho al terreno y sea denunciable por otro.

En consecuencia mando que serviendole de titulo el presente y teni-

endose por firme y valedero se tome razon en el libro respectivo y se entregue al interesado para su resguado y demas fines.

Dado en Monterey á tres de Octubre de mil ochocientos treinta y cuatro.

JOSÉ FIGUEROA.
AGUSTIN V. ZAMORANO.

Queda tomada razon de este despacho sobre ajudicacion de terrenos á pagas cincuenta y cinco numero cincuenta y seis y obro en la secretaria de mi cargo.

MONTEREY, 13*th de Octubre* 1834.

ZAMORANO.

Filed in office March 17th, 1853.

GEO. FISHER, *Secretarg.*

13 *Translation of documents H. I. T., No's* 1, 2 *and* 3, *annexed to the deposition of Wm. A. Richardson.*

RANCHO DE LA BOLSA DE SAN CAYETANO.

Most Excellent Deputation:

Don Ignacio Vallejo, a sergeant in expectation of preferment, of the company of the presidio of Monterey, declares before Y. E. that inasmuch as the honorable the Governor Don Pablo Vicente de Sola has given, in the name of the King, to me and to the sergeant Dolores Pico, both belonging to said company, the site named Bolsa de San Cayetano, comprised between the beach and the highway leading from this presidio to the town of Branciforte, as it appears from our petition and the decree of said honorable governor, which, together with this memorial, I submit to Y. E., in order that your E. may approve it and confirm it to us, which we beg and ask in justice, and for which we will be exceedingly grateful, since from it we can derive our comfort and the maintenance of our numerous families.

MONTEREY *October* 18*th*, 1824.

(Signed) JOSÉ PICO.
(Signed) IGNACIO VALLEJO.

A decree.

MONTEREY, *October* 25*th*, 1824.

Taking into consideration the fact the former honorable governor granted to the two parties the lands lying from the highway to the beach, comprising the Bolsa de San Cayetano, they ought to possess them without anybody being allowed to prejudice them, and all are bound to adhere to the aforementioned decree.

(Signed) ARGUELLO.
(Signed) JOSÉ JOAQUIN DE LA TORRE,
Secretary.

14 *To the honorable the commandante general, (gefe superior político,) superior political chief:*

Citizen José de Jesus Vallejo represents before your honor, with due respect, that inasmuch as he owns six hundred head of black cattle and one hundred and eighty heads of mares, colts, and fillies on the Rancho de San Cayetano, he requests that your honor may be pleased to grant to him the faculty of branding, branding with a brand indicating sale, and marking with a signal with the irons and marks expressed in the margin, which are the very same that have been in use ever since 1790, at which epock the Honr. Governor Don Pedro Fages allowed my father, by means of a decree, the permission to do so, and he continued using them ever since that time to this day; and said document having been lost, he is now obliged to solicit a new register, which favor he expects to obtain of your honor, if it should appear convenient to your honor.

Register iron or brand.

Iron or brand showing sale by first owner.

A mark; a cut which leaves part of the ear hanging; literally, an ear-ring.

MONDAY, *October the* 25*th*, 1827.

(Sig'd) JOSÉ DE JESUS VALLEJO.

This site comprises two leagues, more or less, in length; and as to the width, it is in parts one league, decreasing to one mile, always reckoning more or less from the highland to the mouth or passage of the Arroyo del Pajaro, (Birds' river,) on the road of the town of Branciforte, on which location he has his sowings, up to the mouth of said site, which forms a "bolsa," purse or hollow, ending on
15 the sea, and within it are to be found abundant pastures and water, with two permanent "lagunas," lagoons, the cattle remaining in complete safety on said place. There is a small oak thicket in the estuary and only the coppice (or brushwood) that forms the rivulet of the Birds, which empties into the sea.

Number 93.

Josè Figueroa, general of brigade of the Mexican republic, commandant general, inspector and superior political chief of the Territory of Upper California.

Whereas Don José de Jesus Vallejo, testamentary executor of the late Dn. Ignacio Vallejo, has pretended for the person benefit of the heirs of said testamentary executor, the tract of land known by the name of Bolsa de San Cayetano, bordering on the Rio del Pajaro, or Bird river, on the high road of the town of Branciforte, on the estuary of the south and on the east, after having previously the legal steps and investigations concerning the subject according to the tenor of the laws and regulations, and taking in consideration the notorious antiquity of his possession of the land, by virtue of the powers conferred on me in the name of the Mexican nation, I have found it fit by a

decree of the 11th inst. to grant to the aforesaid testamentary executor the tract of land mentioned in confirmation of the grant made by the hon. Governor Don. Pablo Vicento de Sola on the twenty-third day of February, 1823, declaring it to be his property by the present letters; said grant to be understood in entire conformity with the provisions of the laws, and under the following conditions:

1st. That he must submit to such conditions as shall be established by the regulations to be formed for the distribution of common
16 lands, and that meanwhile neither the grantee nor his heirs shall have power to divide nor alienate that which is granted to him, nor to burden it with any annuity, entail, bond, mortgage, or any other burden, though it may be for a pious cause, nor shall he be able to transfer it to manos muertos, (mortmain.)

2d. He may enclose it without prejudicing the paths, roads, and servitudes; he shall enjoy it freely and exclusively, appropriating it to the use and cultivation that may best suit him; but within a year, at the utmost, he shall build a house, and it shall be inhabited.

3d. He shall solicit of the respective judge to give him the juridical possession by virtue of the patent, by whom the boundaries shall be traced, on the limits of which he shall plant, besides the landmarks, some fruit trees or forest trees of some usefulness.

4th. The tract of land granted is of two square leagues, more or less, as the sketch accompanying the preceeding shows. The judge who should give the possession shall cause it to be measured according to ordinance, in order to mark the boundaries, the surplus remaining at the disposal of the nation for convenient uses.

5th. If he should contravene any of these conditions, he shall lose his right to the land, and it shall become liable to denunciation by any other party.

Consequently, I order that the present writing serving as a title deed to him, and being held as valid and firm, the same be entered in the corresponding book, and be delivered to the party concerned for his own security and other purposes.

Given in Monterey, this 13th day of October, 1834.

(Signed) JOSÉ FIGUEROA,
17 (Signed) AGUSTIN V. ZAMORANO, *Sec'y.*

A proper entry of this patent on adjudication of lands was made, (leaf 55, No. 56,) which is lodged in the secretarial office under my charge.

MONTEREY, *October the* 13*th*, 1834.

(Signed) ZAMORANO.
E. C.
R. P.

Filed in office March 2d, 1852.

GEO. FISHER, *Sec'y.*

18

19 *Opinion by Com'r R. Aug. Thompson.*

Case No. 85.

JOSE DE JESUS VALLEJO *vs.* THE UNITED STATES. } Bolsa de San Cayetano.

The petition in this case sets out that on the 18th day of October, 1824, Don Ignacio Vallejo presented his petition to the territorial deputation of California praying for the confirmation of a certain grant made to him by Governor Don Pablo Vicente, in the name of the King of Spain, of a tract of land called Bolsa de San Cayetano, situate in the present county of Monterey.

That on the 25th day of the same month, in the year 1824, the said deputation confirmed and ratified said grant and declared him to be the lawful owner of the said tract of land. That afterwards, in the year 1834, and after the death of the said Ignacio Vallejo, the present claimant, as his testamentary executor, deeming it advisable, for the interests of the heirs to obtain a grant, more in accordance with all the formalities of the Mexican law, presented all the documents relative to the matter to José Figueroa, acting governor of California, and obtained of him a full and perfect grant of all said tract of land, known as the Bolsa de San Cayetano, on the 13th day of October, 1834.

That the said petition of Ignacjo Vallejo to the departmental assembly, (territorial deputation,) the decree of the same, and a copy of Governor Figueroa's grant, are on file in the archieves of California, now in the possession of the United States surveyor general for the State of California, duly certified copies of which are filed with the petition. That the original grant is in his possession ready to be offered in evidence. It then sets out the boundaries of the
20 land as contained in the grant, and that Ignacio Vallejo took possession immediately after he obtained the first grant from Pablo Vicente; that during his lifetime he, and, since his death, his heirs, among whom is this petitioner, have held full and undisputed possession of said land, and have exercised, acknowledged, and exclusive ownership over the same. The documentary evidence filed in support of the claim thus presented consists in the order of date of an original petition from Ignacio Vallejo, a distinguished sergeant of the cavalry company of the port of Monterey, to Gov. Don Pablo Vicente de Sola, dated June 2d, 1822, praying for permission to build a house on the place and Bolsa de San Cayetano, where said governor had already allowed him to breed cattle since the year 1817, and a marginal decree in the same, dated October 12th, 1822, signed "Sola," awarding the permission prayed for. Second, a petition addressed to the most excellent territorial deputation, by Ignacio Vallejo and José Pico, dated Oct. 18, 1824, setting out that, inasmuch as Don Pablo Vicente de Sola had given to the said Vallejo and Dolores Pico, both sergeants of the company of Monterey, in the name of the King of Spain, the site named Bolsa de San Cayetano, they therefore prayed the deputation to approve and confirm it to them. On this petition

there is a marginal decree signed "Arguello," and "Joaquin de la Torre," secretary, dated Oct. 25, 1824, declaring that in consideration of the fact that the former honorable governor granted to the two parties the lands lying from the highway to the beach, comprising the Bolsa de San Cayetano, they ought to possess them without anybody being allowed to prejudice them. Third, the original grant from Gov. Figueroa, dated Oct. 13, 1834, granting the land to the present claimant as the testamentary executor of the late Don Ignacio Vallejo, who has solicited it for the personal benefits of the heirs of said testamentary executor. and describing the boundaries. This grant is in the usual form and contains the customary condi-
21 tions, except that it is declared to be in considera ion of the antiquity of the possession and in reaffirmation, or revaledature, (revalidacion) of the grant made by Gov. Don Pablo Vicente de Sola on the 23d day of Feb., 1823, and is not made subject to the approval of the territorial deputation or supreme government, although the land was situated immediately on the coast, and was consequently within the ten littoral leagues. The authenticity of all the original documents and the genuineness of the signatures of Don Pablo Vicente de Sola, José Figueroa, Agustin V. Zamorano, and of Luis Antonio Arguello, where they appear thereon, are duly proven by the testimony of William A. Richardson, who also proves the occupation of the land from his earliest knowledge of it many years since—first by the original grantee, Ignacio Vallejo, the continuation of that occupation by his family ever since his death up to the present time,and that the present claimant is the administrator and general agent of the family. The traced copy of the expediente from the archieves in the office of the surveyor general contains copies of all the original documents except the first mentioned, and in addition a petition from the present claimant, dated 25th Oct., 1827, for a renewal of the bounds and marks for cattle, which he states were allowed his father by a decree of Gov. Fages in 1790, to which is appended a description of the land, from which it appears to contain something less than two square leagues, being two leagues, a little more or less, in length, and one league,diminishing to one mile, a little more or less,in breadth. There are some facts presented in this case which, although they do not materially affect the result, yet are important in themselves and worthy of consideration as illustrating the views of the Mexican authorities in California in relation to grants made under authority of the King of Spain, and by the Mexican governors prior to the passage of the colonization law of 1824, and the regulations of 1828. These facts are entitled to more weight from their occurrence
22 under the administration of Gov. Figueroa, one of the earliest and certainly one of the most intelligent of the Mexican governors, to whom the administration of her colonization laws was committed. It appears from the original draft of the grant issued by on the 13th of Oct., 1834, contained in the traced copy from the archieves, that the words "in revalidation of the grant made by the Sr. Governor Don Pablo Vicente de Sola, the 23d day of Feb., 1823," were inserted in the document delivered to the party, to serve as a title from a marginal note made on the original draft, and that the words reserving the

approbation or disapprobation of the most excellent the territorial deputation, and of the supreme gov't, were stricken out of it, and not contained in the original title at all. The presumption arising from these facts is very strong that Gov. Figueroa recognized the grant of Gov. Sola as made by legal and competent authority, and therefore conveyed a good and valid title to the grantee, but being made prior to the passage of the law of the 18th of August, 1824, it was not subject to the restrictions imposed by that law in relation to the litteral leagues, nor to the provision requiring the approval of the territorial deputation, confirmed by the regulation of the 21st of November, 1828. Consequently in the new title, which he issued in revalidation of the lost one, those provisions were entirely omitted. Whether this presumption, however, be correct or not, there can be no doubt that the grant of Gov. Figueroa confers such a title on the party as will entitle him to a confirmation according to the principles settled by the board in other cases, provided the boundaries are sufficiently well defined to identify the same, and for its location. Upon this point the case presents no difficulty. It is true there has been no act of juridical measurement or possession proven, but there are four boundaries given,
within which the land is situated, three of those boundaries
23 are natural objects, being a river on one side, the ocean on the other, and an estuary, or arm running up from the sea, on the other; the fourth is the line of an ancient highway, the position of which can doubtless be easily established, and its point of intersection with the river, or that of the river with the ocean, furnish points of identification by which the land may be readily located and surveyed. The question of occupation or cultivation, as required by the grant, are equally clear. The documentary evidence, as well as the deposition of Richardson, prove that the claimant or his ancestors have occupied the land for thirty years, and although there is no proof that a house was built after the issuing of the new grant, according to one of its conditions, it would seem to be a harsh measure of justice to reject a claim in all other respects meritorious, and where the requirements of the law had been substantially complied with long prior to the issuing of the grant on account of the non-performance of a condition, the right of the governor to insert which is, in my opinion, to say the least, doubtful, and which, in the present case, is clearly more a matter of form than substance. There is in this case also the usual reservation of the sobrante or overplus for the use of the nation. The description of the land, however, shows it clearly to be a grant of all the land within the limits given in the grant, and other papers in the case show that the quantity does not exceed much, if any, the two square leagues it was supposed to contain. A question is raised by the law agent in relation to the rights of Dolores Pico, who it appears was the co-grantee with Ignacio Vallego in the original grant. This is shown by the petition to the territorial deputation in 1824, which was presented in the names of the two parties, and the confirmation of the grant made to them jointly.

The proceedings upon the application for the new title in the year 1834 were instituted and carried on in the name of the executor, and for the benefit of the heirs of Ignacio Vallego alone. As Gov. Figue-

roa had all the evidence before him, and doubtless entered
24 into a full investigation of all the facts presented in the record, we can hardly presume that he would have overlooked so important a point as that presented by right of the co-grantee to one-half of the premises, had that right been then a subsisting one. No reference is made whatever to any such right in the proceedings before him, and the whole tract is granted to the legal representatives of Ignacio Vallejo. In the absence, then, of any claim on the part of Pico or his representatives to any part of the land, either before or since, the inference is conclusive that he had either transferred his rights to his co-grantee, or had abandoned them altogether. The petitioner in this case asks for a confirmation of the claim in his own name, but it is very evident, both from the language of the petition, as well as from the evidence in the case, that it was intended to be in his fiduciary character as the executor of his father and trustee for his co-heirs. According, therefore, to the principle settled in case No. —, heretofore decided by the board, a decree of confirmation will be entered in favor of the claimant as trustee for the benefit of the legal representatives of Ignacio Vallejo, dec'd.

Filed in office Dec. 6, 1853.

GEO. FISHER, *Sec'y.*

25 *Decree of confirmation.*

Case No. 85.

JOSÉ DE JESUS VALLEJO *vs.* THE UNITED STATES. } Bolza de San Cayetano.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said José de Jesus Vallejo is valid, and it is therefore hereby decreed that the same be confirmed to him as testamentary executor of the late Don Ignacio Vallejo, deceased, and for the benefit of the heirs, devisees, or legal representatives of the said testator. The land hereby confirmed is known by the name of Bolza de San Cayetano, is situate in the county of Monterey, on the road leading from the city of Monterey to Santa Cruz, being the same now held and occupied by the family and legal representatives of the said Ignacio Vallejo, dec'd, forming a bolsa or purse extending to the sea, and is bounded as follows: By the Rio del Pajaro, or Bird river, by the line of the road leading from the ancient presidio of Monterey to the town of Branciforte, by the estuary of the south, and by the coast as held and occupied by the parties aforesaid, and containing two square leagues, more or less; reference for a more particular description to be had to the grant and other papers on file in the case.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Com's.

Filed in office Dec. 6th, A. D. 1853.

GEO. FISHER, *Sec'y.*

26 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-four pages, numbered from one to twenty-four, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case 85 on the docket of the said board, wherein José de Jesus Vallejo is the claimant, against the United States, for the place known by the name of "Bolsa de San Cayetano."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-second day of August, A. D. 1854, and of the independence of the United States of America the seventy-eighth.

[L. S.]

GEO. FISHER, *Sec'y.*

27 *Notice of appeal from the board of U. S. land commissioners.*

On appeal from the board of U. S. land commissioners, in the southern district —Case No. 35.

To the clerk of the U. S. district court, southern district of California:

SIR: Please to take notice that the claimant in the above case will prosecute the appeal therein.

Yours, respectfully,

CAMPBELL, TAYLOR & BECKH,
Att'ys for Claim't.

SAN F'CO, *Dec. 8th*, 1854.

Filed Dec. 12th, 1854.

C. E. CARR, *Cl'k.*

28

29 *Answer.*

In the district court of the United States for the southern district of California.

THE UNITED STATES *vs.* JOSÉ DE JESUS VALLEJO. } Court docket No. 35.—Transcript No. 85.

This respondent, for answer to the petition filed in this case, answers and says: It is true that the lands mentioned in said petition and in said transcript of the proceedings before the said board of commissioners lie within the said southern district of California, and within the jurisdiction of this court; but this respondent denies that

his title to the said land is invalid, and avers that the same is valid, and prays that the decision of the said board be affirmed, and that his title be decreed to be valid.

JOSÉ DE JESUS VALLEJO,
By STANLY & KING,
His Attorneys.

30

31 *Appeal notice.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 30th November, 1854.

JOSÉ DE JESUS VALLEJO
vs.
THE UNITED STATES. } No. 85.

You will please take notice that in the above case decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of August, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

CUSHING,
Attorney General.

Filed January 10th, 1855.

C. E. CARR, *Cl'k.*

32

33 *Petition of U. States for review.*

In the district court of the United States for the southern district of California, Los Angeles county, State of California.

JOSE DE JESUS VALLEJO
ads.
THE UNITED STATES. } No. 35.—Transcript No. 85.

To the Hon. Isaac S. K. Ogier, judge of the district court of the United States for the southern district of California:

The petition of Pacificus Ord, (of Los Angeles county,) attorney of the United States for the southern district of California, who petitions in this behalf for the United States; and being present here in court in his proper person, in the name and behalf of the United States, represents as follows:

That heretofore, to wit, on or about the 2nd day of March, A. D. 1852, José de Jesus Vallejo presented a petition to the commissioners to ascertain and settle the private land claims in the State of California, claiming the tract of land called Bolsa de San Cayetano, in the county of Monterey, in the words and figures following, viz:

"The petition of José de Jesus Vallejo, respectfully showeth that on the 28th day of October, 1824, Don Ignacio Vallejo made and presented his petition to the most excellent deputation of California, praying for the confirmation of a certain grant made to him, the said Ig-

nacio Vallejo, by governor Pablo Vincento, in the name of the King of Spain, of a tract of land called the Bolsa de San Cayetano and situated in the present county of Monterey. That on the 25th day of October, 1824, said departmental assembly, at Monterey, by a decree under the signature of Don Arguello and of José Joaquin de la Torre, acknowledged, confirmed, and ratified said grant of Pablo Vincente to Ignacio Vallejo, and declared him to be the lawful owner of said
34 land. That afterwards, in the year 1834, and after the death of said Ignacio Vallejo, your petitioner, testamentary executor of the late Ignacio Vallejo, deeming it advisable, for the interests of the heirs, to obtain a grant more in accordance with all the formalities of the Mexican law than the decree above referred to, presented all the papers and documents relative to said matter to José Figueroa, acting governor of California, and obtained of him a full and perfect grant of all said tract of land, known as Bolsa de San Cayetano, on the 13th day of October, 1834. That said petition of Ignacio Vallejo to the departmental assembly, the decree of the same, and a copy of Governor Figueroa's grant are now on file in the archives of California, at present in the possession of the surveyor general of the United States of America for the State of California, and that duly certified copies of the same, together with the respective translation, are herewith submitted and prayed to be made a part to this petition. That the last-mentioned grant of Figueroa is now in the hands of your petitioner, and ready to be offered in evidence whenever required. That said land is situated in the present county of Monterey; is known under the name of Bolsa de San Cayetano, and that the boundaries of the same, according to the terms of said grant, are as follows: The beach, the highway leading from the presidio of Monterey to the town of Branciforte, on the Rio del Pajaro, or Bird river, and the estuary of the south, containing altogether two square leagues, more or less; and your petitioner further saith that said Don Ignacio Vallejo took possession immediately after obtaining said first grant of Pablo Vincente in the name of the King of Spain, and that he, during his lifetime, and his heirs afterwards, among whom your petitioner, have up to this time held full and undisputed possession of said land, and have exercised, acknowledged, and exclusive ownership over the same."

35 He therefore claims to be the lawful owner of said land, and prays that your honorable body will confirm his claim and title thereto. Your petitioner further represents that thereafter, to wit, on the 6th day of December, A. D. 1853, the said commissioners confirmed by final decree the said claim of said José de Jesus Vallejo in the words and figures following, to wit:

"In this case, on hearing the proofs and allegation, it is adjudged by the commission that the claim of the said José de Jesus Vallejo is valid, and it is therefore hereby decreed that the same be confirmed to him as testamentary executor of the late Don Ignacio Vallejo, deceased, and for the benefit of the heirs, devisees, or legal representatives of the said testator. The land hereby confirmed is known by the name of Bolsa de San Cayetano, is situate in the county of Monterey, on the road leading from the city of Monterey to Santa Cruz, being the same now held and occupied by the family and legal rep-

resentatives of the said Ignacio Vallejo, dec'd, forming a bolsa or purse extending to the sea, and is bounded as follows: By the Rio del Pajaro, or Bird river, by the line of the road leading from the ancient presidio of Monterey to the town of Branciforte, by the estuary of the south, and by the coast, as held and occupied by the parties aforesaid, and containing two square leagues, more or less. Reference for a more particular description to be had to the grant and other papers on file in the case.

"ALPHEUS FELCH,
"THOMPSON CAMPBELL,
"R. AUG. THOMPSON, *Com's.*

"Filed in office Dec. 6th, A. D. 1853.

"GEO. FISHER, *Sec'y.*"

That thereafter, to wit, on the 26th day of August, A. D. 1854, a duly certified transcript of the said decree, and proceedings and
36 the papers and evidence on which it was founded in said cause, was filed in the office of the clerk of the district court of the United States for the southern district of California, and marked No. 35, (transcript No. 85 ;) reference to which it is prayed may be had, and made a part of this petition.

That on the 18th day of August, A. D. 1854, the Hon. Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of said final decree and proceedings of said commissioners in said cause, (No. 35,) and the papers and evidence on which said decree was founded.

That thereafter, to wit, on the 10th day of January, A. D. 1855, the said Attorney General of the United States filed, or caused to be filed, on behalf of the United States, a notice with the said clerk of said district court for the southern district of California that the appeal in said cause of José de Jesus Vallejo *vs.* the United States, from the decision of the said commissioners to ascertain and settle the private land claims in the State of California in the district court of the United States for the southern district of California, will be prosecuted by the United States.

Your petitioner further represents that the said land claimed, as aforesaid, is within the jurisdiction of this honorable court.

And your petitioner further represents and insists that the said decree of said commissioners is erroneous, and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law and evidence apparent in said certified transcript of said cause now in appeal from said commissioners to this hon. court.

And your petitioner further represents that the said claim is invalid, and the said decree erroneous on the following grounds:

I. And the said attorney denies all and singular each
37 and every allegation in the said petition of said claimant to said commissioners of said date; and he further denies that any grant or titles for said land were ever made, as alleged in said petition; and he denies further that the said claimant has shown any or sufficient evidence of the validity of the said claim.

II. That the said alleged grants of Pablo Vicente Sola and José Figueroa were unlawful, and the latter was made in violation of the 4th article of the colonization law of Mexico, of the 18th of August, A. D. 1824, in this: that the land granted, as alleged by claimant, was and is within ten leagues of the sea-coast: and there is no evidence shown by claimant that the supreme general executive power of Mexico previously approved of the colonization of the public lands in Upper California, lying within ten leagues of the sea-coast. And it is denied that such previous consent of the said supreme general executive power of Mexico in such case was ever had.

III. That at the date of the said alleged grants the said lands claimed as aforesaid were occupied by and in the possession of the missions of the territory of Upper California, and they were held and occupied particularly by the mission of Santa Cruz, and could not therefore be colonized.

IV. That the said alleged grant of José Figueroa has not the conditions required by, and is not made in entire conformity with, the laws of Mexico of the 18th day of August, A. D. 1824, and the regulations for the colonization of the territories of Mexico of the 21st November, A. D. 1828.

V. That there is no sufficient evidence of the death of Ignacio Vallejo, as alleged in claimant's petition.

VI. That there is no evidence that the said claimant was or is the testamentary executor of said Ignacio Vallejo, as alleged by said claimant; and he fails to show the last will and testament of said Ignacio Vallejo.

38 VII. That there is no evidence that the name of Ignacio Vallejo appearing upon the document purporting to be a petition of Ignacio Vallejo to the col. and gov. Pablo Vicente de Sola, dated 2d June, 1822, is the genuine signature of said Ignacio Vallejo.

VIII. That the alleged grant of Governor Figueroa, dated 13th October, 1834, purports to be a revalidation of a previous concession to Ignacio Vallejo by Pablo Vicente de Sola, dated 23rd February, 1823. And it is denied that said Sola ever made a concession of said land to said Vallejo of said date. And it is further denied that said Sola ever had any lawful authority to make a grant or concession of public lands in California, and it is also denied that the said Governor Figueroa had any lawful authority to revalidate, renew or make a grant of said land of said date to said José de Jesus Vallejo in manner and form as alleged.

IX. That the said alleged grant of Governor Figueroa is not made subject to the approbation of the territorial deputation of California, or the supreme government of Mexico, as required by law.

X. That the alleged concession or grant of Pablo Vicente de Sola of the date of the 23rd of February, 1823, referred to in said petition of said claimant, and in the said alleged grant of Gov. Figueroa is not shown by claimant, nor its absence accounted for.

XI. That there is no evidence that the said alleged grant of Governor Figueroa of said land to said José de Jesus Vallejo of said date of the 13th of October, 1834, was ever approved by the territorial deputation or assembly of California, or by the supreme general ex-

ecutive power or government of Mexico. And it is denied that said grant was ever so approved by said deputation or assembly, or said executive power or government.

XII. That the said alleged grant of Governor Figueroa does
39 not sufficiently describe the tract of land of two square leagues, a little more or less, so that it can be with certainty identified, located and surveyed.

XIII. That the said claimant shows no definitive title for said land claimed by him.

XIV. That the said claimant fails to show a full and perfect grant obtained from Governor Figueroa for the land he claims as alleged. He fails to show his petition to said Governor Figueroa for said land. He fails to show the original or an authentic copy of the espediente, or proceedings thereon; and he has not produced the map, or an authentic copy thereof, of the tract of land called Bolsa de San Cayetano, referred to in the said alleged grant of Governor Figueroa, and no cause for its absence is shown by said claimant.

XV. That the said map referred to in said alleged grant of Governor Figueroa is an essential part thereof, without the aid of which the limits and extent of said tract of land called Bolsa de San Cayetano cannot with certainty be determined.

XVI. That there is no evidence that the said Ignacio Vallejo or said claimant ever asked for or received the juridical possession of the said tract of land, as required by law and the 3rd condition of the said alleged grant of said Governor Figueroa, or that the said tract of land was ever segregated from the public domain of Spain or Mexico.

XVII. That there is no evidence that the said claimant ever performed the second condition of the said alleged grant of Governor Figueroa, by building a house on the said land within a year from the date of the said grant, and having it occupied. And it is denied that this said condition was ever performed by said alleged grantee or claimant.

XVIII. That there is no evidence that Ignacio Vallejo took possession of the place called Bolsa de San Cayetano immediately after
40 he obtained the alleged grant from Pablo Vicente, (de Sola,) as alleged by said claimant; and there is no evidence that he ever lived upon and occupied said place.

XIX. And there is no evidence showing who are the testamentary or other heirs of said Ignacio Vallejo.

And no proof having been made by said claimant of the allegations of his said petition, or in support of his said claim, filed as aforesaid, no decree ought to have been made or grounded thereon; but the said petition ought to have been dismissed, and said claim rejected by said commissioners upon the grounds aforesaid.

And the said claimant having no valid right or title derived from the Spanish or Mexican government to the said land claimed by him, as aforesaid, the lawful right and title in and to the said land was acquired by, and it now belongs to the said United States, by virtue of the treaty of peace, friendship, limits, and settlements with the republic of Mexico, dated at the city of Guadalupe, Hidalgo, February 2d, A. D. 1848.

Wherefore the said Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States by reason of the premises, and in pursuance of the act of Congress entitled "An act to ascertain and settle the private land claims in the State of California," approved March 3rd, A. D. 1851, and the laws and statutes in such case made and provided, prays that the said José de Jesus Vallejo may be served with a copy of this petition, and that this hon. court will review the said decision or final decree of confirmation of said commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said José de Jesus Vallejo for said land claimed and confirmed as aforesaid, and that the same may be decreed in-
41 valid. And all such other orders, judgements, or decrees as may be just, with costs and general relief.

P. ORD,
Attorney of the United States for the southern district of California.

Filed August 13th, 1855.

C. E. CARR, *Cl'k.*

42

43 *Decree.*

José de Jesus Vallejo, appellee, *ads.*
The United States, appellant.
} No. 35.—"Bolsa de San Cayetano."

United States district court for the southern district of California.—December term, A. D. 1855.

This cause coming on to be heard, on an appeal from the decision of the commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved on the 3rd of March, 1851, upon the transcript of the proceedings and decision and papers and evidence on which said decision was founded, and it appearing that said transcript was filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed that the decision of the said commissioners be, and the same is hereby, affirmed; and it is further adjudged and decreed that the claim of the above-mentioned appellee is good and valid, and the same is hereby confirmed, to the extent of two square leagues of land within the limits described in the grant; provided, that should the quantity of land within said limits be less than two leagues, then confirmation is hereby made of such less quantity.

ISAAC S. K. OGIER,
U. S. Dist. Judge.

Recorded Feb'y 19th, 1857, page 78.

Filed March 7th, 1856.

C. E. CARR, *Cl'k,*
By O. MORGAN, *Dep'y.*

44

45 *Notice of appeal, S. C.*

In the district court of the United States for the southern district of California.—Los Angeles, December term, 1855.

JOSÉ DE JESUS VAELEJO, appellee, *vs.* UNITED STATES, appellant. } No. 35, No. 85 of transcript.—On appeal from the United States land commission.

On motion of P. Ord, attorney of the United States for the southern district of California, it is hereby ordered by the court that an appeal be granted the United States to the Supreme Court of the United States from the judgment of this court, against the said United States in the above-entitled cause, rendered on or about the 1st day of February, A. D. 1856.

P. ORD,
Dist. Att'y.

Filed March 7th, 1856.

C. E. CARR, *Cl'k*,
By O. MORGAN, *Dep'y.*

46

47 *Stipulation.*

JOSÉ DE JESUS VALLEJO, appellee, *ads.* UNITED STATES, appellant. } No. 35.—Bolsa de San Felipe.

In the United States district court for the southern district of California.—Dec'r term, 1856.

In pursuance of a letter from the Attorney General of the United States, hereunto annexed, saying that it is not the intention of the United States to prosecute the appeal in said cause, it is hereby stipulated by and between the parties that an order of record be entered, vacating the order of appeal heretofore granted, and the claimant have leave to proceed, under the decree heretofore rendered in his favor, as a final decree.

Los Angeles, Jan'y 9, 1857.

P. ORD, *Dist. Att'y.*
HANCOCK & STANLEY & KING,
Att'y for Claim't.

Letter of Att'y General U. S.

CALIFORNIA LAND CLAIMS,
Attorney General's Office, 25 *September*, 1856.

SIR: In the case of the claim of José de Jesus Vallejo, confirmed to the claimant by the commissioners, case No. (85) eighty-five, and

also confirmed on appeal by the district court, appeal in the
48 Supreme Court will not be prosecuted by the United States.

I am, respectfully,

CUSHING.

PACIFICUS ORD, Esq.,
U. S. Attorney, Los Angeles.

Rec'd Nov. 4th, 1856.

Filed this 9th January, A. D. 1857.

C. SIMS, *Cl'k*,
By J. H. COLEMAN, *Dep'y.*

49 *Order to dismiss appeal.*

In the United States district court for the southern district of California.—Jan'y, 1857. Before Hon. Isaac S. K. Ogier, judge.

JOSE DE JESUS VALLEJO, appellee, *ads.*
UNITED STATES, appellant. } No. 35.

The Attorney General of the United States having given information by letter that it is not his intention to prosecute the appeal heretofore taken to the Supreme Court of the United States in this cause, and a stipulation having been entered into by the district attorney for vacating the order granting an appeal to the Supreme Court of the United States, and for leave to the claimant to proceed under the decree heretofore rendered in his favor, on motion of the United States district attorney of the southern dist. of Cal., it is ordered, adjudged, and decreed that the order granting an appeal in this case to the Supreme Court of the United States be, and the same is hereby, vacated, and the claimant have leave to proceed under the decree of this court heretofore rendered in his favor as a final decree.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the S. dist. of Cal.

Filed Jan'y 9th, 1857.

C. SIMS, *Cl'k.*

50

51 *Motion for order upon surveyor general to return plat of survey.*

In the district court of the United States for the southern district of California.

THE UNITED STATES *vs.* JOSE JESUS VALLEJO. } In district court, No. 55.—Bolsa de San Cayetano.—In land commission, No. 85.

Now, at this time, comes J. R. Gitchell, United States district attorney, and shows to the court here that there is error in the location of the grant and the survey made by the surveyor general of the United States for the State of California of the premises claimed in this case by the claimant, in this, to wit:

1st. That said grant has been improperly located by said surveyor general.

2nd. That said location of grant and survey has not been made according to the calls of the grant and the decree of this court.

3rd. That the location of said grant and survey of said lands by said surveyor general gives to said claimant a much greater quantity of land, to wit, 6,000 acres more than said grant calls for.

4th. That said grant has been in other respects wrongfully and fraudulently located as against the United States.

Wherefore the said United States, by the district attorney aforesaid, prays the court for an order upon the said surveyor general that he return into this court, in a convenient and reasonable time, a correct plat of the survey of the lands aforesaid, in order to abide the further action of this court thereon.

J. R. GITCHELL,
U. S. Dist. Att'y.

Filed in office this 13th Sept., 1859.

C. SIMS, *Cl'k.*

52

53 *Certified copy of order.*

JOSE JESUS VALLEJO, *ads.* THE UNITED STATES. } No. 35.

On motion of J. R. Gitchell, att'y for the United States, and upon filing his motion that the surveyor general of the United States for the State of California return to this court, in a convenient and reasonable time, the plat of the survey heretofore made by him of the premises claimed in the above-entitled cause.

It is ordered that the hearing of said motion be set down for the first Tuesday in October next, and it is further ordered that the United States serve upon the claimant or his attorney a copy of this order ten days before the hearing of said motion.

I. S. K. OGIER,
Judge of the district court, south'n dist. of Cal'a.

UNITED STATES OF AMERICA,
Southern district of California, county of Los Angeles:

I, C. Sims, clerk of the United States dist. court for the southern dist. of California, hereby certify that the foregoing is a full, true and correct copy of the original order made in said cause, as appears of record on file in my office.

[SEAL.] In witness whereof, I hereunto set my hand and affix the seal of said court, this the 15th day of Sept. A. D. 1859.

C. SIMS, *Cl'k.*

54 Rec'd this 15th day Sep. 1859.

J. C. PENNIE,
U. S. Marshall, S. Dist. Cal.

I served the within notice by delivering a copy of the same to S. D. King, attorney for claimants, on Sept. 23rd, 1859.

JAMES C. PENNIE,
U. S. Marshall for the south'n dist. of Cala.

Filed 31st Oct., 1859.

C. SIMS, *Cl'k.*

55 *Certified Copy.—Order.*

U. S. dist. court southern district of Cal'a.

JOSÉ JESUS VALLEJO
vs.
THE UNITED STATES. } No. 35.

It being suggested to the court that the survey of the land claimed in this case, made under final decree and approved by the U. S. surveyor general for California, does not conform to said decree and is erroneous, and that said survey will be to the injury of the United States, the party applicant, on application of J. R. Gitchell, U. S. dist. attorney.

It is ordered that the said surveyor general return forthwith to this court the plat of said survey, and that the United States be allowed days from and after the return to file exceptions thereto; and it is further ordered that a certified copy of this order be served upon the said surveyor general for his information.

ISAAC S. K. OGIER,
Judge U. S. dist. court southern dist. of California.

UNITED STATES OF AMERICA,
Southern Dist. of California, county of Los Angeles:

I, C. Sims, clerk of the United States dist. court for the southern dist. of California, do hereby certify that the foregoing is a full, true, and correct copy of the original order made in said case, No. 35, on the docket of said court, wherein José Jesus Vallejo is claimant against the U. States, on the 7th day of November, A. D. 1859, as appears of record on file in my office.

56 In witness whereof I hereunto set my hand and affix the
[SEAL] seal of said court this the 6th day of January, A. D. 1860.

C. SIMS, *Clerk.*

The President of the United States to J. W. Mandeville, U. S. surveyor general for California, greeting:

You are hereby notified that the United States dist. court for the southern district of California in open court made on the 7th day of November, A. D. 1859, in case No. 35, on the docket of said court, wherein José Jesus Vallejo is claimant against the U. States, an order of which the above and foregoing is a certified copy, herewith transmitted to you for your information, and you are hereby required to take notice of the same.

Witness the Hon. I. S. K. Ogier, judge of the U. States dist. court for the southern district of California, this the 6th day of January, A. D. 1860.

[SEAL] Attest my hand and seal of said court the date and year last above written.

C. SIMS, *Clk.*

I served the within personally on J. W. Mandeville, by delivering a copy of the same to him in the city of San Francisco, on January 13th, 1860.

JAMES C. TENNIE,
U. S. Marshall,
By A. W. BUCHANAN,
Deputy.

Filed January 20th, 1860.

C. SIMS, *Cl'k.*

(Here follows map—see original page 56.)

No. 232. *Boundaries.*

No.	Course.	Distance.	No.	Course.	Distance.
1	S. 12½° E.	100.00	39	S. 67° E.	15.00
2	85¼ W.	26.80	40	52½	3.00
3	58½	27.22	41	70¼	7.00
4	81	25.75	42	N. 73	22.00
5	N. 83¾	24.17	43	59½	16.00
6	S. 57¼	27.19	44	20¾	4.50
7	34¼	53.70	45	26½	10.00
8	10½	83.12	46	32¾	5.00
9	N. 77½	1.30	47	S. 75¼	19.00
10	S. 11½	10.00	48	N. 46¾	9.00
11	41¾	6.00	49	25¾	6.00
12	54¼	8.00	50	16¼ W.	16.00
13	N. 69¼	6.00	51	11¼	13.00
14	58	7.00	52	57¼ E.	44.00
15	S. 79¾	4.00	53	36½	8.51
16	N. 77	8.00	54	22¼	30.00
17	S. 73¼	68.30	55	31¾	6.00
18	55¼	40.15	56	86½	25.00
19	7½	14.00	57	33¾	11.00
20	7¾ E.	16.00	58	74	16.00
21	27¾	54.43	59	S. 86¾	20.00
22	19¾	10.00	60	N. 83¾	12.00
23	56¼	7.15	61	51¾	37.00
24	N. 67 W.	234.10	62	88¼	20.00
25	60¼ E.	8.30	63	S. 46¼	17.00
26	37	20.00	64	55¾	20.00
27	31¼	4.00	65	N. 75¼	8.00
28	22¼ W.	3.00	66	24¾	29.00
29	19¼ E.	3.00	67	S. 86¼	14.00
30	24¼ W.	20.00	68	N. 47¾	25.00
31	17¼	23.00	69	56¼	15.00
32	16¾ E.	8.00	70	S. 41¾	9.00
33	46¾	21.00	71	0½ W.	10.00
34	36¾	22.00	72	32¾	20.00
35	21¼	29.00	73	65½	29.00
36	48¾	47.00	74	28 E.	11.00
37	79½	9.00	75	68½	16.00
38	S. 54½	8.00	76	N. 47½	27.00
		1,092.69			625.01
					1,092.69
	Aggregate				1,717.70

Mls. chs. lks.
= 21 37 70

U. S. SUR. GEN'L'S OFFICE, *San Francisco.*

I certify this to be a full, true and correct copy of the original plat on file in this office of an official survey of the rancho "Bolsa de San Cayetano," finally confirmed to José De Jesus Vallejo.

In witness whereof, I have hereunto signed my name, and caused the seal of this office to be affixed this 24th day of January, 1860.

J. W. MANDEVILLE,
U. S. Sur. Gen'l, Cal'a.

57 *Exceptions to survey and notice.*

In the district court of the United States for the southern district of California.

THE UNITED STATES, appellants, *vs.* JOSE DE JESUS VALLEJO, appellee. } No. 35 in district court.—Bolsa de San Cayetano.—No. 85 in land com.

Now comes J. R. Gitchell, U. S. district attorney for the southern district of California, and excepts to the final survey made by the United States surveyor general for the State of California of the lands claimed by the appellees in the above-entitled cause.

The lines of said survey to which exceptions are hereby made are designated upon the map of said survey now on file in this court, as follows:

1. The line commencing at oak Y. P. 2 B. S. C. 2, thence running to oak B. S. C. 9.

2 The line commencing from about equidistant between 17 and 18; thence running to post B. S. C. 10, sec. 4.

3. The line commencing at post B. S. C. 10, sec. 4; thence running to post B. S. C. 11 on Pajaro river.

4. The line commencing at post B. S. C. 11 on Pajaro river; thence running to about a point on Pajaro river where the figures 44, 45, 46, 47 are marked on the map.

J. R. Gitchell, U. S. district attorney for the southern district of California, being duly sworn upon his oath, says that the foregoing exceptions are true as he is informed, and verily believes.

J. R. GITCHELL,
U. S. Dist. Att'y.

58 Sworn to and subscribed before me this 18th day of February, A. D. 1860.

[SEAL.] C. SIMS,
Cl'k of the U. S. Dist. Court for the southern dist. of Cal'a.

To the appellees or their attorneys in the above-entitled cause:

You are hereby notified that the hearing of the above and foregoing exceptions in the above-entitled cause will be brought on to a hearing before said court in thirty days after the service upon you of a copy of the same, or as soon thereafter as counsel can be heard.

Los Angeles, February 18, A. D. 1860.

J. R. GITCHELL,
U. S. Dist. Att'y.

I served a copy of the within personally on W. W. Stow, attorney for appellee in the city of San Francisco, in the State of California, on the 13th day of March, 1860.

JAMES C. TENNIE,
U. S. Marshall,
Per A. W. BUCHANAN,
Dep. U. S. Marshall.

Filed in office this 18th February, A. D. 1860.

C. SIMS, *Cl'k.*

59 *Stipulation.*

In the district court of the United States, southern district of California.

THE UNITED STATES, app'l, *vs.* JOSE DE JESUS VALLEJO, resp't. } "Bolsa de San Cayetano."—In the matter of the survey of said rancho.

It is stipulated herein as matter of proof that the land embraced in the final survey on file in this court was selected by the claimants, and that it is within the exterior boundaries of the grant, but that it abuts upon all the calls in the grant, though not in their entire extent, as shown in the plat on file.

It is further stipulated that there are two old adobie houses within the location and selection which were built by the claimants more than twenty years ago.

Dated Jan'y 4th, 1861.

W. W. STOW,
Of counsel for claimants.
ISAAC HARTMAN,
For J. R. GITCHELL,
U. S. dist. att'y.

The above stipulation is filed and can be used by either party subject to the modification of the deposition of J. E. Terrell relative to the fact that the line marked "Y" does not abut in the Pacific ocean.

J. L. BRENT, *att'y for pl'ffs.*
J. R. GITCHELL, *U. S. dist. att'y.*

Filed March 16, 1861.

G. L. MIX, *Cl'k,*
60 Per JOHN O. WHEELER, *Deputy.*

61 *Deposition of Terrell*

In the district court of the United States for the southern district of California.

JOSE DE JESUS VALLEJO, app'lee, *ads.* THE UNITED STATES, app'l't. } In land cases, district court No. 35. Land com's.

Be it remembered that on this 16th day of March, A. D. 1861, at the city of Los Angeles, in the district aforesaid, before me, G. L.

Mix, U. S. commissioner for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes pending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared J. E. Terrell, a witness produced on behalf of the United States in the above-entitled cause, now pending in said court, under act of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: J R. Gitchell, U. S. dis. att'y, attorneys for United States, and J. L. Brent, esq., attorney for claimant.

Questioned on behalf of the United States.

Ques. What is your name, age, occupation, and place of residence?

Ans. Name is J. E. Terrell; age, 31 years; am a lawyer, and now a United States deputy surveyor, and at present I reside in Los Angeles county.

Ques. Are you acquainted with a ranch called "Bolsa de San Cayetano," in Monterey county?

Ans. I am.

Ques. Look upon the map here shown you marked "J. O. W., No. 1," and being the map on file in this case, and state what it
62 represents, and what knowledge you have of the same.

Ans. It represents the survey of the rancho Bolsa de San Cayetano before mentioned as made by me.

Ques. State at whose instance and under whose direction you made the location as represented by this map?

Ans. Before entering upon the survey I had been furnished by the surveyor general with a sketch of a previous survey of the same rancho, which showed me that there was more land within the exterior boundaries than was confirmed to the complaint. My general instructions from the surveyor general directed me to allow the claimant in such cases to make a selection of his quantity within the boundaries. Under these instructions this location was made under the direction of Jesus Vallejo, the claimant. He pointed out to me the place on which he wanted the quantity located.

Quest. Look upon the map here shown you, marked "J. O. W., No. 2," and state whether the same represents truly the sketch of the former survey of which you have spoken, and which is now before you.

Ans. Yes, it does.

Quest. Please delineate upon the map by pen or pencil marks, as nearly as you can, the survey as made by you?

Ans. This survey is delineated by the lines designated V, W, X, Y, Z; lines W and Y, drawn in blue pencil, are merely approximations.

Quest. State what is the character of the land or country lying between lines W, the line marked "old road from Monterey to Santa Cruz," and the line running along the slough, or estero, as shown on map marked "J. O. W., No. 2."

Ans. It is partly hilly and partly mountaneous, covered with timber, some little chamisal, but on the whole very good grazing land, but not fit for cultivation.

63 Quest. How does this land compare in quality and value with the land included within the lines of your survey?

Ans. A part of the land included within the survey, say 2,500 acres, is of the same character; as to the rest, it is greatly superior for purposes of cultivation, but not so much so superior for grazing purposes.

Quest. State what the character or quality of the land is southerly of the line marked Y, and between the estero and Pacific ocean.

Ans. It is first class table land, and good as any in any portion of the survey, except the valley land proper.

Quest. State whether you found any lagoons within the survey you made.

Ans. I remember of seeing one, and there may have been more, but I am not positive, as I run the exterior lands only One of these lagoons is correctly laid down and represented by the lagoon (large lagoon) on the map marked "J. O. W., No. 2."

Quest. State if you remember the locality of the old adobie houses upon the tract relatively to the survey you made.?

Ans. I don't remember any house particularly, other than the one Vallejo lived in. There are a great many houses on the tract, but I know nothing about them.

Ques. State the relative situation of the land marked Y on map "J. O. W., No. 2" to the Pacific ocean.

Ans. It is some distance north of the ocean, and does not abut upon the ocean at any point.

The claimant objected to all questions concerning the previous survey, to the production of the map, to questions concerning the value and description of lands excluded from and included in the official survey, as irrelevant.

64 *Cross-examination by att'y for claim't.*

Quest. State if there are any natural objects where station Q on the official map is established.

Ans. It was established at the foot of a large range of hills, and near the old road, the same being an agreed point between the owners of the rancho of Santa Cayetano and the rancho "Vega del Rio del Pajaro," which rancho was also surveyed by me so as to adjoin upon the rancho of San Cayetano up to station No. 7, about, thence running southeast about. Which survey of mine was finally approved by the surv. gen'l.

(This answer objected to so far as relates to the survey of the rancho Vega del Rio del Pajaro.)

Ques. State what portion of this hilly timbered land that you speak of is included within and excluded from the official survey of the rancho of San Cayetano.

Ans. About equal portions, as near as I could judge from an observation of the country. It was my intention to divide it about equally.

Ques. Look upon the map marked "J. O. W., No. 2" and state what would be the position of the point marked "old adobie house" if the survey was forced to abut upon the ocean, and to be limited to

two leagues, and taken in a compact form, according to the instructions and customs of the surv. gen'l's office.

Ans. It would be excluded from the survey of the rancho entirely.

Ques. State if you saw that old "adobie house" marked on that map, and if so, what was its appearance as to age?

Ans. I did see it, and it bore the appearance of the generality of old adobie houses in this country belonging to the Mexican period.

65 *Examined by U. S.*

Quest. Do you remember the house marked on map "J. O. W., No. 2," J. de J. Vallejo? if so, state its appearance as to age.

Ans. I did not observe its appearance as to age, having seen it from a considerable distance. It had a shingle roof.

J. E. TERRELL.

Sworn and subscribed to before me this 16th day of March, A. D. 1861, whereunto I have affixed my private seal, having no seal of office.

[SEAL.]

G. L. MIX,
United States Commissioner.

Filed March 16th, 1861.

G. L. MIX, *Cl'k*,
Per JOHN O. WHEELER, *Dep'y.*

66

(Here follows map marked original, page 66.)

It is agreed that this map represents the first survey of the Bolsa de San Cayetano, and which was disappoved by the surveyor general of the U. S. in California, on the sole ground that the within plat and the survey on which it is founded embraced and included more than two leagues of land, said S. general claiming that only two leagues *was* confirmed to the claimants.

Jan'y 4, 1861.

J. HARTMAN,
For J. R. GITCHELL,
U. S. Dis. Att'y.
W. W. STOW,
Of counsel for claimants.

67 *Special instructions from sur. gen'l to his deputy.*

UNITED STATES SURVEYOR GENERAL'S OFFICE,
San Francisco, Cal., June 1, 1859.

SIR: Whereas the claim of José de Jesus Vallejo to the tract of land hereinafter described has been confirmed by the board of land commissioners, and affirmed by a decree of the United States court for the southern district of California, and the said decisions have become final and conclusive by the United States having abandoned any appeal therefrom, as appears by the evidence on file in this office, I have thought proper to appoint you my deputy in this special case for the execution of the final survey thereof.

In the decree of the land commissioners it is declared, "That the land hereby confirmed is known by the name of Bolsa de San Cayetano, is situated in the county of Monterey, on the road leading from the city of Monterey to Santa Cruz, being the same now held and occupied by the family and legal representatives of the said Ignacio Vallejo, deceased, forming a bolsa or purse, extending to the sea, and is bounded as follows: by the Rio de Pajaro, or Bird river, by the line of the road leading from the ancient city of Monterey to the town of Branciforte, by the estuary of the south and west, as held and occupied by the parties aforesaid, and containing two square leagues, more or less, reference for a more particular description to be had to the grant and other papers on file in this case."

The district court in the decree of affirmation says: "It is ordered, adjudged, and decreed, that the decree of the said commissioners be, and the same is hereby, affirmed; and it is further adjudged
68 and decreed that the claim of the above-mentioned appellee is good and valid, and the same is hereby confirmed to the extent of two square leagues of land, within the limits described in the grant. Provided, that should the quantity of land within said limits be less than two leagues, then confirmation is hereby made of such less quantity."

Your survey must conform to the decree above mentioned, and for a more particular description of the manner in which you are to proceed in the execution of the work and the standard of admeasurements, I refer you to my general instructions to deputy surveyors, dated September first, 1858, a copy of which is herewith enclosed. Your compliance with the requirements therein is strictly enjoined.

Very respectfully, your ob't serv't,

J. W. MANDEVILLE,
U. S. Sur. Gen'l.

J. E. TERRELL, *Dep'y Surv'r.*

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, by virtue of the power vested in me by law, do hereby certify that the two preceding and hereunto annexed pages, numbered from one to two, inclusive, exhibit a true, full, and correct copy of instructions issued to Jas. E. Terrell, deputy surveyor, for the survey of the rancho "Bolsa de San Cayetano," the original of which is on record in this office.

In witness whereof I have hereunto signed my name
[SEAL.] officially and caused my seal of office to be affixed at the city of San Francisco, this ninth day of November, 1861.

E. F. BEALE.
U. S. Surveyor General for California.

Examined and found correct.

E. CONWAY, *Chief Clerk.*

Filed April 9th, 1862.

JOHN O. WHEELER, *Cl'k.*

69 *Notice of re-argument.*

In the district court of the United States, southern district of California.

THE UNITED STATES, appellants,
vs.
JOSE DE JESUS VALLEJO *et als.*, appellees } No. 35.—"Bolsa de San Cayetano."

To the said José de Jesus Vallejo, et als., or their attorneys:

You are hereby notified that on Monday, the 27th inst., at an extra term of said court, to be held in Monterey, district aforesaid, commencing on the 22d inst., or as soon thereafter as the same can be heard, the said United States will move the court for a re-argument of the exceptions to the final survey in the above-entitled cause.

January 13, 1862.

ISAAC HARTMAN,
For the United States.

Served the above notice upon W. W. Stow, attorney for appellees, at San Francisco, by delivering personally to him a true copy of the same on the 20th day of January, 1862.

HENRY D. BARROWS,
U. S. Marshall, S. D. Cal.

Filed January 29th, 1862.

JOHN O. WHEELER, *Cl'k.*

70

71 *Instructions from the S. Gen'l for Cal'a to deputy sur's.*

General instructions from the U. S. surveyor general for California to the deputy surveyors engaged in surveying the finally confirmed land claims in the State.

Instructions.

1st. In making the survey of ranchos that have been finally confirmed, you will not only use great diligence and precaution in ascertaining the true locality of each claim, but exercise much care and discrimination in establishing the boundary lines in such a manner as to preclude any reasonable ground of complaint or opposition on the part of any person who may be interested in the same. A strict adherence to this mode of procedure is of paramount inportance, and is absolutely essential in all cases, in order to do justice to the proper owners of the land, as well as to obviate the necessity of a resurvey, the expenses of which the department would not be likely to sanction.

2d. If other land claims held under legitimate titles adjoin any claim to be surveyed, you will, before commencing operations, ascertain all the information you respecting such claims, and notify the claimants in writing of the time at which any lines in which they may be interested will be run; and if they themselves, or agents, are

present at the time of running such lines, that fact must be stated. In case any line as run by you between any such adjoining land claims shall be agreed upon between the respective claimants of the lands, you will obtain their written assent to such agreements; and in case any of the claimants shall make a written protest against any such lines you may establish, you will note the same, and return all such agreements, protests, and other relevant documents to this office with your field-notes.

3. With a view to ascertain the precise locality and boundaries of each claim with as much accuracy as possible, you will consult the most reliable witnesses that can be obtained, who may have resided in the vicinity, or have been more or less connected with the former government officials in the disposition of lands, and who
72 may, from personal knowledge, be intimate with the boundaries and landmarks mentioned in the grant and other documents relating thereto. You will enter in your field-book all information that may have a tendency to throw light upon any matter in controversey, or to show the propriety of the course you adopt in making the survey.

4. Upon making these preliminary examinations, should you have good reason to believe that in any instance, by the phraseology of the final decree, lands are included therein which are clearly not embraced within the limits of the claim as originally granted, you will be particular in your endeavors to ascertain the exact nature and cause of such variance, and report all the facts to this office for further instructions.

5. Where a confirmee is limited to a less quantity of land than is embraced within the boundaries of his original title papers, he may select out of any portion of such larger tract the quantity to which he is entitled, but the quantity thus selected must form a compact body of land; and if any portion of the original grant has been sold as such by the owners thereof, such portion is to be included within the limits of the claim thus selected if practicable, without destroying the compactness of the survey.

6. It is required in locating these claims that the boundaries shall conform as near as the nature of each case will admit of to the lines forming the legal subdivisions of the public lands; and hence, when the boundary is not the bed or bank of a river or other watercourse, the margin of a swamp or other overflowed land, or a line separating different claims, it should, if possible, be established by running to the cardinal points so as to correspond to what otherwise would be the general course of such boundary line, and at the same time dispense with fractions of the legal subdivisions of sections where the adjacent public lands are surveyed.

7. Where a river, creek, arroyo, or other watercourse, which is not navigable or declared to be so by the laws of the State,
73 forms a boundary of any ranch, you will run the line along the channel or middle of the bed of the stream and not on either of its banks; and when swamp or other overflowed lands constitute the boundary, you will, unless otherwise specially instructed, if upon

tide-water, establish such boundary so as to coincide with the line of ordinary high tide; but if not upon tide-water, with the line where the land becomes of such a marshy overflowed character as in ordinary seasons to prevent the proper cultivation of the soil, or the raising of planted crops.

8 These surveys must be connected with the nearest established corners on the lines of the adjacent public surveys in order to indicate the precise locality of each claim; and a post must be established at the point where any such line is intersected by the boundary line of any claim properly marked with reference to the private grant as well as the public lands.

9. If, upon testing such intersections with the courses and distances of the lines of the public surveys, you find that the actual connections so made differ materially from what, by calculation, they should be, there must be some error either in your own work, or in the reported public lines; and, therefore, while in the field you must critically inquire into the cause of the discrepancy, correct the error if in your own work, and if in the public surveys, state the precise nature and extent of it.

10. The distances must be measured in chains and links, with a chain duly tested by the standard in this office, and the bearings taken with a transit or other proper instrument, with due corrections for the declination of the magnetic needle, to ascertain which the necessary astronomical observations must be made.

11. The "corner monuments" must be established in a permanent manner, of durable materials, and conformably, in all respects, to the instructions relative to the surveys of the public lands with the exception that the posts are to be marked with the initial letters of the name of the rancho, and numbered in regular succession, instead of the sectional numbers.

74 12. The field-book must be neatly kept in the same manner as in the surveys of the public lands, and furnish all the requisite information in regard to notable objects and other matters specified in the instructions to the U. S. deputy surveyors. The field-notes are to be made on the prescribed kind of paper, and to be accompanied by a neat and accurately protracted map, upon a convenient scale, say 20 or 40 chains to the inch, and also by the proper tabling, showing the lines as run, with their latitudes and departures, the balancing of the work, and the computation of the area of the survey.

13. The field-notes must be verified by your own affidavit, and those of your assistants, in the same manner as is prescribed in the instructions for the surveys of the public lands.

14. In all cases you will consider the judicial league equal to 5,000 Spanish lineal varas, 4,635 English yards, or 210.6818 chains, and consequently the vara equal to $33\frac{372}{1000}$ English inches, and the sitio mayor, or square league, containing $4{,}438\frac{683}{1000}$ acres.

15. You are prohibited from receiving payments from any party, other than the United States, for running the exterior lines of private land claims, and no survey thereof will be approved in this office where such compensation has been received.

16. A rigid compliance with these instructions in every particular will be invariably expected.

Addenda explanatory of the foregoing.

In order that the foregoing may be clearly understood by the deputy surveyors, I have thought proper to make some remarks on the same, based upon the experience of the returns made during the past years, and you will consider these as part of the printed instructions in all matters herein set forth.

75 You will, up on makinga contract for public surveys, or upon receiving instructions for the survey of private land claims, call upon the examiner of surveys for the form of oath for deputies for this fiscal year; which, when duly attested and filed with the examiner, will be the only preliminary oath required from yourself until your appointment is revoked In the surveys of private land claims the oaths of your assistants, before entering on the work, and after the completion thereof, will be taken before yourself.

Your own final oath is required to each return.

In return of public surveys as each field-book becomes a public record, it will be necessary to have the preliminary and final oaths of assistants, and your own final oath, in their respective places in each book. Your own oath should be taken before a notary public, or some competent officer with a seal.

Sec's 1, 2, 3, of the printed instructions. You are expected to place before this office in your field-notes, immediately after the preliminary oaths, a general summary of the steps taken by you to comply with these sections of the instructions, stating fully from whom you received protests, agreements as to boundaries, &c., &c., and return all original papers so received with your field-notes.

Sec's 4 and 5. You will report all facts under these sections to this office in your summary above alluded to.

Sec. 6. You are required to comply with this section as set forth in the printed instructions.

Sec. 7. Requires no explanation.

Sec. 8. You cannot be too particular in obtaining information with regard to the lines of the public surveys connected with your work before leaving this office, and when on the field a post must be established at all intersections, marked, &c., as required, and the whole matter set forth distinctly in your field-notes.

76 Sec. 9. You will be careful to comply with these instructions, and report in your field-notes all discrepancies or errors found in the lines of previous surveys.

Sec. 10. Requires no explanation.

Sec. 11. Corner monuments: "corners are be regarded as at every point where the course changes, except in meandering rivers, bays, sloughs, &c., &c." You will report in your field-notes the manner of conforming to the instructions.

Sec. 12. You will make your returns in the prescribed forms of the office, specimens of which will be handed to you by the examiner.

When notable land objects, marks, &c., are mentioned in your instructions as having been on the lines or boundaries of the juridical possession, or are noted on the deseños, you will be careful to note

their true position in your returns with reference to your survey by name, topography, &c.

You are expected in all cases to return perfect plats of your survey. The form used for titles in this office can be seen in the office of the examiner.

You will observe that the field-notes and plat must agree as to topography, &c; should the scale of 40 chains to the inch be too small to delineate the topography, use that of 20 chains to the inch.

In running the boundaries of ranchos the methods of off-setting or triangulation should not be resorted to, except in cases where they become inevitably necessary. The deputy is required to establish a post at the point where he ceases to run the line by chaining; this point is to be established agreeably to the instructions given for establishing sec. cor. in public surveys, with the modification to mark them with the initials of the rancho, instead of the rule of marking there prescribed. A similar post has to be established at the
77 point where the actual boundary is taken up again by chaining. The deputy is required to enter in his field-book all notes and calculations which he arrives at; the length and direction of any line not actually marked out and chained on the ground.

Any information you may require in the progress of your surveys will be cheerfully given at all times upon application to this office.

It is my wish to have the work returned by the deputies in such a manner as to preclude the possibility of a suspension thereof, either in this office or at Washington, and a strict attention to the foregoing instructions will cause the work to be forwarded with despatch, and, as a consequence, the prompt settlement of the accounts of the deputies will follow.

SAN FRANCISCO *Sept.* 1*st*, 1858.

U. S. SURV. GEN'L.

Filed April 9, 1862.

JOHN O. WHEELER, *Cl'k.*

78

79 *Order dismissing except's to survey.*

In the district court of the United States for the districts of California, southern district.

Present: Hon. F. M. Haight, district judge.

JOSE DE JESUS VALLEJO
vs.
THE UNITED STATES. } No. 35.

The United States surveyor general for the State of California having, in pursuance of the final decree of confirmation heretofore entered in this cause, made a plat and survey of the lands confirmed to the claimant; and the surveyor general having, upon exceptions to such survey filed by the United States district attorney, returned such survey to this court; and a certified copy of the plat of said survey having, in pursuance of the order of this court, been filed in the

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office of the clerk of this court "this 6th day of February, 1860;" and it appearing, to the satisfaction of this court, that all the advertisements and publications required by the rules of this court, and by the act of Congress, relative to approved surveys in California, approved 14th June, 1860, have been duly made and published; and the legal delay for all persons to intervene and except to said survey having expired, and no exceptions to said survey (except by the United States) having been filed, and the court having heard the arguments of B. C. Whiting, U. S. district att'y, and I. Hartman, of counsel in support of the exceptions filed by the United States, and Patterson, of counsel for the claimant; and the court having duly considered all things pertaining to the said survey, it is by the court ordered and adjudged that the survey of the "Rancho Bolso de San Cayetano," as evidenced by a plat of said rancho, marked plat of the Bolsa De San Cayetano, finally confirmed to José de Jesus
80 Vallejo, "surveyed, under instructions from the U. S. surveyor general, by J. E. Terrell, dep. sur., June, 1859, containing $8,866\frac{43}{100}$ acres," scale 40 chains to one inch, and also endorsed on such plat a certificate of the U. S. surveyor general, dated "this 24th day of January, 1860," be, and the same is hereby, in all things, confirmed and ratified; and it is further ordered and adjudged that the lands embraced and included in said survey and plat is the tract of land finally confirmed to the claimant in this cause.

Thus done and signed in open court this 14th day of April, A. D. 1862, at Monterey, Cal'a.

FLETCHER M. HAIGHT,
District Judge of U. S. for Southern District of California.

Filed April 14, '62.

JOHN O. WHEELER, *Clerk.*

81 Whereupon the following order was had in open court, to wit:

Order granting appeal to the U. S. Supreme Court.

U. S. district court for the southern district of California.

JOSE DE JESUS VALLEJO
vs.
THE UNITED STATES. } No. 35. D. C.

On motion of B. C. Whiting, esq., U. S. dist. att'y, it is ordered that an appeal be granted the United States to the Supreme Court of the United States, from the order made in this case, approving the official survey of the lands claimed herein.

82 OFFICE OF THE CLERK OF THE UNITED STATES DISTRICT COURT
For the Southern District of California.

I, John O. Wheeler, clerk of the United States district court for the southern district of California, hereby certify that the above and foregoing eighty-one pages, numbered from 1 to 85, both inclusive, to

contain a full, true, and correct transcript of the record of the proceedings and of the decision of the said court, of the documentary evidence, and of the testimony of the witnesses upon which said decision was founded, on file in my office, in case No. 35 on the docket of said court, wherein José de Jesus Vallejo is the claimant, against the United States for the place called "Bolsa de San Cayetano."

In witness whereof, I have hereunto signed my name and affixed the seal of said court, at Monterey, Cal'a, this the 30th day of June, A. D. 1862.

[L. S.]

JOHN O. WHEELER, *Cl'k.*

Filed Oct'r 21, 1862.

In the Supreme Court of the United States.

No. 164.

DECEMBER TERM, 1863.

THE UNITED STATES, appellants,
vs.
JOSÉ DE JESUS VALLEJO, appellee.

STATEMENT OF FACTS.

This is an appeal by the United States from the decree of the district court of the United States for the southern district of California, under the act of June 14, 1860, in relation to the location and survey of the grant to the appellee, named the "Bolsa de San Cayetano."

The decree of confirmation by the land board, dated December 6, 1853, was in these words:

"The land hereby confirmed is known by the name of Bolza de San Cayetano; is situate in the county of Monterey, on the road leading from the city of Monterey to Santa Cruz, being the same now held and occupied by the family and legal representatives of the said Ignacio Vallejo, deceased, forming *a bolsa or purse extending to the sea*, and is bounded as follows:

"(1.) By the Rio del Pajaro, or Bird river. (2.) By the line of the road leading from the presidio of Monterey to the town of Branciforte. (3.) By the estuary of the south. And, (4,) by the coast, as held and occupied by the parties aforesaid, and containing two square leagues, more or less; reference for a more particular description to be had to the grant and other papers on file in the case."—(*Printed Record, p.* 13.)

On appeal to the district court, that court entered the following decree, February 19, 1857, viz:

"It is ordered, adjudged, and decreed, that *the decision of the said commissioners be, and the same is hereby, affirmed;* and it is

further adjudged and decreed that the claim of the above-mentioned appellee is good and valid, *and the same is hereby confirmed to the extent of two square leagues of land*, within the limits described in the grant; provided, that should the quantity of land within said limits be less than two leagues, then confirmation is hereby made of such less quantity."—(*Printed Record, p.* 20.)

These two decrees became final by an order of the said court based upon a notice from the Attorney General that no appeal to the Supreme Court would be prosecuted by the United States, granting the claimant leave to proceed under the decree before rendered in his favor, as upon a final decree.—(*Printed Record, p.* 22.)

Under that decree the first survey shown by map, called for at marginal, p. 66, "the Freeman survey," was made in March, 1857, containing $14{,}751\frac{64}{100}$, an excess of nearly 6,000 acres over and above the two leagues of land confirmed, for which reason it was set aside by the surveyor general.—(*Ib., p.* 30.)

This map shows the Bolsa, its location, and boundaries, very clearly. It has three natural boundaries, viz: The Pajaro river on the north, and the ocean and the Vallejo slough on the south. Its eastern boundary is artificial, made by the old road from Monterey to Santa Cruz.—(*See also Opinion of Land Board, p.* 12.)

After the first survey had been set aside by the surveyor general, a new survey was ordered. This new survey was made by Terrel in June, 1859, and is that shown by the map called for at the marginal, page 56, of the Record, and contains $8{,}866\frac{43}{100}$ acres. To this survey exceptions were filed by the United States February 18, 1860. They will be found in the printed Record, page 26. The principal objections relate to the eastern line designated as "W," and to the southern line designated as "Y," on the map of the Freeman survey.

After argument, the court, April 14, 1862, confirmed the second, or "Terrel survey," without alteration; and from that decree the United States has appealed, (*Printed Record, p.* 37,) under the authority conferred by the act of June 14, 1860, sections 6, 4, and 5.—*Stat. at Large for* 1859–'60, *p.* 34.

ARGUMENT.

The United States object to the survey of the rancho "Bolsa de San Cayetano," as confirmed by the decree of the district court, and for cause assign the following reasons:

1st. Because the land solicited and granted, as its name indicates, was a "bolsa" or bag—a "*cul de sac*"—formed by three natural water boundaries, viz: The Pajaro river, the estero, and the ocean. The ocean forms the bottom of the bag, while the Pajaro river and the estero form its two enclosing sides. The mouth of the bag is closed by the "old road from Monterey to Santa Cruz," the only artificial boundary named.—(*See map of Freeman's survey.*)

2d. Because the land was originally selected and used as a *cattle range*, on account of the peculiar advantages arising from its natural water boundaries.

This is evident from all the original papers in the case.—(*See the original petition in June*, 1822, *Printed Record, p.* 4; *the petition of October* 25, 1827, *and the accompanying description of the land, in which its advantages for grazing purposes are enumerated, ib., p.* 8.)

3d. Because in the necessary selection of the less from the greater quantity included within the exterior boundaries of the "bolsa" or bag, in determining the boundaries to be retained, preference should be given to *natural*, rather than to *artificial*, boundaries.

As between the natural and the artificial, there are *three* natural boundaries, and only *one* artificial boundary. The selection, therefore, should be made in such a way as to preserve the natural form of the "bolsa" or bag as far as possible, and in such a way as to avoid a needless multiplication of artificial boundaries. If the bag is too long and holds too much, the most simple and natural suggestion is, *to cut off the excess from the top of the bag, preserving its bottom and sides, which are made by natural boundaries.* In this mode of survey there will be but *one* artificial boundary, as was the case in the original grant, and no increase in the number of artificial boundaries. In the survey appealed from there are *three artificial boundaries*—the road in part, the line "W" cutting off a large tract of grazing land, and the line "Y" cutting off the bottom of the bag, and with it, also, a large tract of grazing land.—(*See map of Freeman's survey.*)

4th. Because *the right of selection* in such cases, whatever it may be, *is not purely arbitrary*, but must be governed by the nature and character of the land granted, by its boundaries, and especially by the objects and uses for which it was solicited and granted, and to which it was subsequently devoted by the grantee.

5th. Because the present survey was made according to *the arbi-*

trary selection of the grantee, (Printed Record, p. 28, fol. 62, testimony of Terrel, the surveyor,) in disregard of all these principles, and *with the sole object of culling out the best agricultural lands of the tract.*

The land south of the line "W" is good grazing land, but is not fit for cultivation.—(*Record, p.* 28.) *Therefore it was rejected.* The land south of the line "Y" is good table land for grazing.—(*Ib., p.* 29.) *Therefore it was rejected.* The land along the river bottom—the valley land—on the contrary, in the language of the surveyor, is "*greatly superior for purposes of cultivation, but not so much so for grazing purposes.*"—(*Ib., p.* 29.) That is to say, the grant was made for *grazing* purposes; and when the selection of the less from the greater quantity comes to be made, *the grazing land is thrown out, at the two opposite ends of the tract,* and the *cultivable land in the middle is selected by the grantee.*

6th. Because the objection made to the mode of survey insisted upon by the United States, that if the ocean and the estero are made the southern boundaries of the grant, the "old adobe house" near the old road and the Pajaro river, will be thrown out of the limits of the grant, *(Printed Record, p.* 29—30,*)* is of minor importance.

The evidence shows that there are "*two* old adobe houses" on the "Bolsa," "which were built more than twenty years ago;" (*Printed Record, stipulation, p.* 27,*)* and that the claimant occupies the one west of the lagoon, which would fall within the lines of the survey, as urged by the United States.—(*See maps.*)

But the location of these houses can have little or no influence on the location of the grant, because it appears that it was admitted before the land commission that no new house had been built on the land after the grant was made.—(*Printed Record, opinion, p.* 12, *fol.* 23. The location of the houses previously built cannot, therefore, properly be allowed to have any controlling influence in the location of the grant. But even this objection may be obviated by making the road the base of the location, with the river and the estero for the two sides. The two leagues confirmed by the grant with these boundaries will include both the old adobe houses, as is shown by the red line drawn across the map, from the estero to the river, marked "N. 15° W." This location will divide the grazing land and the valley land, without giving the whole of the latter to the grantee, as is done by the present location and survey.

We insist, therefore, that the present survey shall be set aside.

hat a decree shall be entered directing the two leagues to be
ff,

. *Upon the ocean as a base,* with the estero and the river as
ro sides, and running north and east for quantity; or, in default
it, we contend—

That they shall be laid off, *upon the old road as a base,* with
tero and the river as the two sides, running west for quantity.
r of these two modes of survey present the natural boundaries
r as possible; compels a selection of the lands in a compact
and prevents the injustice and unfairness towards the govern-
of culling out the best lands and throwing the refuse lands
the two opposite ends of the ranch upon the hands of the
nment. Of the two modes of survey, the first is the more
tent with principle; but either of them is preferable to the con-
survey now before the court.

JOHN A. WILLS,
Special Counsel.
EDWARD BATES,
Attorney General.